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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1365

TIMOTHY F. LEARY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The initial opinion of the court of appeals (Pet. App. A) is reported at 383 F. 2d 851; the opinion denying rehearing and rehearing *en banc* (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on September 29, 1967. A petition for rehearing and rehearing *en banc* was denied on March 29, 1968. The petition for a writ of certiorari was filed on April 27, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, petitioner's prosecution for transporting non-tax-paid marihuana in violation of 26 U.S.C. 4744(a)(2) is barred by the privilege against self-incrimination.

2. Whether the presumption in the marihuana importation statute (21 U.S.C. 176a) is constitutional.

3. Whether petitioner's religious beliefs are a defense to his prosecution for marihuana violations.

4. Whether, in the circumstances, it was reversible error for the prosecutor to fail, on his own initiative, to inform the defense that one of the government's witnesses was under federal indictment on unrelated charges.

5. Whether the indictment adequately apprised petitioner of the nature of the offenses with which he was charged.

STATUTES AND RULES INVOLVED

The relevant statutes and rules (26 U.S.C. 4741–4744; 26 U.S.C. 4751–4753; 26 C.F.R. 152.61–152.68) are set forth in Appendix A, *infra*, pp. 17–24).

STATEMENT

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted of transporting and concealing fraudulently imported and non-tax-paid marihuana in violation of 21 U.S.C. 176a and 26 U.S.C. 4744(a)(2).[1] On March 11, 1966, pursuant to 18 U.S.C. 4208(b), he was tenta-

[1] Petitioner's daughter, Susan Leary, who waived jury trial, was convicted of transporting non-tax-paid marihuana (26

tively sentenced to the maximum punishment, pending completion of a study and recommendation to be used by the court in determining the ultimate sentence. The court of appeals affirmed the convictions (Pet. App. A), and denied rehearing (Pet. App. B).

The government's evidence showed that at approximately 6:45 p.m. on December 22, 1965, petitioner and four others arrived at the secondary inspection area, Laredo International Bridge, Laredo, Texas. On being requested to unload the baggage, petitioner stated that the five occupants had earlier crossed the bridge to the Mexican Inspection Station, but had been denied permission to enter Mexico until the following morning. A customs inspector observed some vegetable material and seeds on the floor of the auto, and the material appeared to be and was in fact marihuana (R. 70–76). Thereafter, petitioner's daughter was found to have in her possession a silver snuff box containing marihuana cigarettes (R. 109–110). When confronted with this evidence, petitioner stated that he had given it to his daughter on the way back across the bridge and had told her to get rid of it (R. 156).

Petitioner testified that, *inter alia*, he had purchased the marihuana in New York (R. 313, 349, 357), and that he would not pay the tax imposed by Section 4741(a)(2) because the tax amounted to an unwarranted infringement upon the exercise of his religious and scientific pursuits (R. 344–345, 348).

U.S.C. 4744(a)(2)), and was sentenced under the provisions of the Youth Corrections Act. Her appeal from that conviction was dismissed on her own motion.

ARGUMENT.

1. Relying generally upon this Court's decisions in *Marchetti* v. *United States*, 390 U.S. 39, *Grosso* v. *United States*, 390 U.S. 62, and *Haynes* v. *United States*, 390 U.S. 85, petitioner contends that his payment of the transfer tax imposed by 26 U.S.C. 4741 (a)(2) would have necessitated incriminating disclosures in violation of his Fifth Amendment privilege against self-incrimination.[2] We urge, on the contrary, that enforcement of the marihuana laws by criminal prosecution does not impinge upon the privilege.

Payment of the tax imposed by Section 4741(a) on the acquisition of marihuana is represented by a stamp affixed by the Treasury to an official order form (26 U.S.C. 4743, 4771(a)). To obtain the order form, the person who intends to obtain marihuana must submit an application and a money order or check to cover the tax due. Thus the possible incrimination, if any, would occur with submission of the application form. In *Marchetti*, *Grosso*, and *Haynes*, each petitioner maintained that he had refused to pay the tax only because such payment would have necessitated incriminating disclosures on accompanying registration forms. Here, however, it is clear that petitioner failed to pay the tax, not because of any fear of possible self-incrimination, but for quite unrelated reasons. Thus, petitioner testified on direct examination that he failed to

[2] This claim was not raised until petitioner's motion for a new trial. Compare *United States* v. *Covington*, 3 Crim. L. Rep. 2027 (S.D. Ohio, March 27, 1968), reconsideration denied, May 6, 1968, where the district court sustained a motion to dismiss an indictment under 26 U.S.C. 4744(a), upon timely assertion of the privilege.

pay the tax because he knew that any application for the order form would have been rejected by the agency entrusted with enforcement of the Act (Internal Revenue Service and Bureau of Narcotics).[3] He also represented that religious beliefs prompted his refusal to take any steps towards payment of the tax, contending that the government had no right or power to tax the means of furthering his religious beliefs.[4] Thus, it is evident that petitioner would not have paid the tax even if to have done so would have involved no risk of incrimination—a conclusion which is reinforced by petitioner's failure to challenge the taxing scheme on self-incrimination grounds, while at the same time asserting such a claim in opposition to the smuggling count charged under the provisions of 21 U.S.C. 176a (see R. 50).[5] In these circumstances, petitioner is in no position to complain about the possibility of incrimination which might have flowed from his voluntary compliance with the terms of the Act; his own volunteered testimony clearly demonstrated that he

[3] Petitioner testified that his applications for acquisition of mescaline, peyote, and LSD had been denied on previous occasions (R. 347), and that he had been aware that the Internal Revenue Service would not issue order forms for the acquisition of marihuana to persons other than those registered under the terms of the Act. (R. 344).

[4] (R. 344): "Q. Did you or not entertain the belief that you did not have to pay this tax?

"A. [By petitioner] I consider taxes on pursuit of knowledge or on religion to be a violation against religion. When a man has to pay a tax—or a tax to pay on his religion, I think it's time to say, 'You have gone too far' to the agents who want you to pay taxes for these purposes."

[5] This latter count was later dismissed on motion for acquittal.

would not have complied with the tax provisions in any circumstances.

In any event, the operation and administration of the Marihuana Tax Act present no "'real,' and not merely trifling or imaginary, hazards of incrimination." *Marchetti* v. *United States, supra,* 390 U.S. at 53. The scheme of the statute here involved is critically different from that in the gambling and the firearms tax statutes and does not present the same risks of self-incrimination. This Act imposes a tax on all transfers of marihuana (26 U.S.C. 4741(a)),[6] and requires that all such transfers be made pursuant to a contemporaneous exchange of an order form issued in blank to the transferee by the Secretary of the Treasury or his delegate (26 U.S.C. 4742). The rate of the transfer tax—to be paid by the transferee[7]—is one dollar per ounce on transfers to persons registered under the applicable provisions of the Act (26 U.S.C. 4751–4753), and one hundred dollars per ounce on transfers to persons, like petitioner, who are not registered (26 U.S.C. 4741(a)). Payment of the tax is evidenced by a tax stamp affixed to the order form. To obtain the order form a person must submit to the District Director of Internal Revenue an application (Form 679a) stating the names and addresses of the proposed transferor and transferee, a description, including the quantity, of the marihuana desired to be transferred, and the transferee's registry number, if so registered under the applicable provisions. A money

[6] With exceptions irrelevant here.

[7] In the event that the transferee does not pay the tax, the transferor becomes liable for its payment (26 U.S.C. 4741(b)).

order or check to cover the amount of tax imposed upon the transaction must be remitted with the application (26 U.S.C. 4741(b); 26 C.F.R. 152.63, 152.66).

Since its enactment, the Internal Revenue Service and Bureau of Narcotics have interpreted and administered this Act *in pari materia* with the Harrison Anti-Narcotic Act of 1914. That is to say, the Act has been administratively interpreted as permitting registration only by those persons whose dealings in marihuana would be in compliance with state law. See 26 U.S.C. 4705(g). The registration requirement in 26 U.S.C. 4753 is expressly conditioned upon the applicability of the occupational tax requirements of Section 4751. But an analysis of the latter section shows, on its face, that the occupational tax provisions (and thus the registration) are directed only toward those who may *lawfully* engage in marihuana transactions under state law. In enumerating the classes of professionals subject to the occupational tax (and registration, derivatively), Section 4751 follows the enumeration of classes of individuals who, under Sections 3–7 of the Uniform Narcotic Drug Act, 9B U.L.A. 409 *et seq.*—in force in all American jurisdictions—might lawfully manufacture, wholesale, dispense, prescribe, or possess marihuana. Under the Marihuana Tax Act, as administratively construed and applied, persons who are not registered—including, of course, those who are not eligible for registration because their involvement with marihuana would violate state law—are not permitted to pay the tax or to acquire marihuana (see 26 C.F.R. 152.66–152.68, requiring that applications for order forms must be signed

by the same person or persons signing the application for registration). If on the face of the application for an order form it appears that the applicant is not lawfully registered—as would be the case with petitioner—the application and the tax tendered are immediately returned to the applicant. No record is made of the application.[8]

Thus this taxing scheme, as applied, provides for the registration only of legitimate dealers and in effect prohibits marihuana transactions or possession by non-registered persons. Legitimate dealers can and do register without incriminating themselves under either state or federal law. Under Section 5(3) of the Uniform Narcotic Drug Act[9] a person who complies with the order form requirements of the Marihuana Tax Act is deemed to be in compliance with state law. Thus, unlike the wagering and firearms statutes, lawful compliance with federal requirements cannot incriminate the person under state law. Alternatively, persons who intend to acquire marihuana illegitimately cannot incriminate themselves because they are *not allowed* to register and thus are, in essence, told that it would be illegal for them to acquire marihuana. Since no record is kept of those who unsuccessfully apply for an order form because they are not eligible, there is no real danger of incrimination. Petitioner is not being punished for failure to disclose unlawful conduct. Rather, he has been convicted for transporting

[8] We reiterate petitioner's own testimony (note 3, *supra*, p. 5) that his applications for permission to obtain other regulated drugs had been denied.

[9] See, *e.g.*, N.Y. Public Health Law, § 3323.3; Texas Penal Code, Art. 725b, § 5(3).

marihuana which (as he acknowledged) he could not obtain authority to possess. The values protected by the privilege against self-incrimination are in no way compromised by punishing such unauthorized conduct.

2. Petitioner's challenge to the constitutionality of the importation statute (21 U.S.C. 176a) presents no issue warranting further review by this Court. It is well established that the legislative inference allowed by 21 U.S.C. 174 (which in this respect is identical to that in 21 U.S.C. 176a) does not compel a defendant to testify in his own behalf. *Yee Hem* v. *United States*, 268 U.S. 178; cf. *United States* v. *Gainey*, 380 U.S. 63. If a defendant chooses not to explain his possession of marihuana, the jury may, but is not compelled to, infer that he was aware of the illegal importation.[10] To be sure, he may be convicted if he fails to testify in his own behalf—but that is true in every case where the government makes a *prima facie* showing of guilt. In addition, a defendant can exculpate himself through the testimony of other witnesses, not merely through his own testimony.

Notwithstanding the argument that marihuana is grown, albeit illegally in most instances, in the United States, the presumption of illegal importation has consistently been held rational and valid. This conclusion is especially forceful in a case, such as this, where seeds are found—indicating marihuana in an "un-

[10] In light of petitioner's defense that the First Amendment allowed his unfettered use of marihuana in pursuit of his religious ideals (see pp. 10–11, *infra*), petitioner would have been "compelled" to testify in his own behalf even if the importation count were not included in the indictment.

manicured" state.[10a] *Caudillo* v. *United States*, 253 F.2d 513 (C.A. 9), certiorari denied *sub nom. Romero* v. *United States*, 357 U.S. 931; *Butler* v. *United States*, 273 F.2d 436 (C.A. 9); *United States* v. *Taylor*, 266 F.2d 310 (C.A. 7), certiorari denied, 361 U.S. 853; *Anthony* v. *United States*, 331 F.2d 687 (C.A. 9), certiorari denied, 368 U.S. 852. The jury in such a situation should be allowed to determine whether it chooses to draw the permissible inference or to accept defense evidence offered to offset it.

3. Petitioner's principal defense at trial and his major contention before the court of appeals (Pet. App. A 1–2) was that he used marihuana in pursuit of his religious ideals (see generally, R. 267–312, 402–418, 422–434). He testified that he had joined a Hindu sect in the summer of 1963 (R. 268), and that many of the Hindu sects used marihuana in the practice of that religion in order to attain a high level of consciousness (R. 288, 294–295, 297–298). Petitioner admitted that the use of marihuana was not essential to the practice of his religion, but expressed the view that the government did not have the power to take marihuana away from him (R. 302–303). At the conclusion of the case, the trial court refused to give an instruction to the effect that, assuming the sincerity and honesty of petitioner's religious belief and the use of marihuana in connection therewith, such beliefs would constitute a defense to the crimes charged. (R. 527–530).

[10a] The court below also referred to testimony before Congress indicating that most marihuana used in this country still comes from Mexico (Pet. App. A 30–32).

This instruction was properly denied. The First Amendment does not prohibit Congress from regulating the transportation and concealment of fraudulently imported and non-tax-paid marihuana. As stated by this Court, religious freedom "embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society". *Cantwell* v. *Connecticut,* 310 U.S. 296, 303–304. See, also, *Braunfeld* v. *Brown,* 366 U.S. 599; *Reynolds* v. *United States,* 98 U.S. 145. Petitioner's reliance upon *Sherbert* v. *Verner,* 374 U.S. 398, is misplaced. There the Court found no "compelling state interest" in disqualifying that petitioner from unemployment benefits because her religious beliefs prohibited work on Saturdays, the day of her Sabbath. Here, however, as the court below noted, the Congress has shown grave concern with respect to the use of marihuana (Pet. App. A 13). This compelling governmental concern is clearly adequate to negate petitioner's assertion of a right to the unfettered use of marihuana as an aid in the practice of his religion—especially in view of the fact that such use was not, by his own admission, essential to the perfection of his religious beliefs.

4. On cross-examination, consistent with his defense that the use of marihuana was for the purpose of furthering his religious beliefs, petitioner testified that he had never smoked marihuana at "Greenwich Village parties" for social purposes. (R. 368–369). On rebuttal, a government witness, Raymond Cutler, testified that petitioner had in fact smoked marihuana

at a social function in Greenwich Village prior to the time petitioner purportedly began to smoke marihuana for religious purposes in India (R. 449–450).

On cross-examination, petitioner's counsel showed that Cutler himself had smoked marihuana and had taken LSD (R. 450–451, 453). He also attempted to show Cutler's bias by bringing out the fact that he had been paid certain expenses by the government in connection with his testimony at the trial. Petitioner's counsel then asked, "* * * how many times have you been picked up for smoking marihuana?" Upon government objection, the court ruled that if counsel sought to impeach the credibility of the witness, he would have to do so by showing a prior conviction. Cutler was then asked if he had any previous felony convictions, and answered in the negative.[11]

While the case was pending on appeal, petitioner's counsel inquired of the United States Attorney

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[11] The relevant cross-examination was as follows (R. 461–462):

"By Mr. FITZGIBBON [defense counsel]:

"Q. You say you live in New York?

"A. Yes, sir.

"Q. And when did you arrive in Laredo?

"A. Sunday night.

"Q. Sunday night?

"And, of course, you were paid by the government to come down here, were you not?

"A. I wasn't paid by the government to come down here. My expenses were paid, yes.

"Q. Well, it's somewhat of an equivocation. Your expenses were paid to come down?

"A. Yes. But I am receiving no salary or anything like that.

"Q. You receive a certain amount of money per day, do you not?

"A. Yes. I believe so.

"Q. So you are being paid, then?"

whether Cutler was, at the time he testified, under indictment in the United States District Court for the Southern District of California for smuggling and for "bail jumping." The United States Attorney replied that Cutler had told him that there were charges pending in California to which he had pleaded not guilty. The United States Attorney stated that neither before, nor during, nor after trial, had any defense counsel asked for information concerning Cutler but that had anyone inquired the United States Attorney would have advised the defense that it understood there were unrelated charges outstanding in California. (Pet. App. E 42–45.)

Petitioner argues that by objecting to the question as to how many times Cutler had been picked up for smoking marihuana, and failing affirmatively to disclose that Cutler was under indictment in California, the government improperly withheld information from the defense. In context, however, it is clear that all parties—defense counsel, the United States Attorney, and the court—considered defense counsel's question as an improper attempt at general impeachment on the basis of prior arrests rather than convictions and

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"Now, what—how many times have you been picked up for smoking marihuana?

"Mr. SUSMAN: We object to that, your Honor.

"The COURT: Are you undertaking to impeach the credibility of the witness? If you are, you may prove it by a prior conviction of felony.

"Mr. FITZGIBBON: Yes, your Honor.

"Q. (By Mr. Fitzgibbon) Have you been convicted of a felony in this state or any other state?

"A. No. I have not.

"Q. You have not?

"Mr. FITZGIBBON: Pass the witness."

not as concerned with exploring the relationship between the witness and the government. The prosecutor's objection was quite proper, for it is well established that credibility may be impeached only by showing prior convictions of felonies or misdemeanors involving moral turpitude, *e.g.*, *Roberson* v. *United States*, 249 F. 2d 737 (C.A. 5), and not by prior arrests or accusations by indictment. The prosecutor had no reason to suspect that the pending smuggling and bail violation charges had any relation to the general question about being "picked up for smoking marihuana". If the defense had suggested that it was trying to find out if the government had some current hold over the witness, the question no doubt would have been allowed and the facts disclosed.

In addition, the incident has no real significance. The government used Cutler as a rebuttal witness only to negate petitioner's defense that he used marihuana solely in furtherance of his religious pursuits. Inasmuch as this defense was subsequently properly removed from the jury's consideration (see pp. 10–11, *supra*), Cutler's testimony was of no importance. Petitioner admitted that he possessed and transported marihuana.

5. Count one of the indictment charged that petitioner clandestinely smuggled marihuana into the United States in violation of 21 U.S.C. 176a. Count two charged that he transported marihuana which had already been fraudulently imported, a separate violation of 21 U.S.C. 176a. Prior to trial, petitioner, by way of motions for a bill of particulars, attempted to compel the government to elect a theory of prosecution based

on either smuggling, or unlawful transportation, but not both (R. 25–26, 41–42). Those motions were denied. At the conclusion of the case, the court, over the government's objection, and apparently crediting defense testimony that petitioner had purchased the marihuana in New York, and had not actually entered the Republic of Mexico prior to his return to the continental United States across the international bridge, granted petitioner's motion to dismiss count one, charging smuggling (R. 520–526). The court decided to submit the transportation count to the jury.

There was nothing necessarily inconsistent in the treatment of these two counts under 21 U.S.C. 176a. The government, to prove smuggling, intended to rely on the inference stemming from the fact that petitioner had entered the Laredo customs station from the direction of the Republic of Mexico. The jury could have been permitted to find that petitioner had transported marihuana from the United States to Mexico and then smuggled it back into the United States from Mexico. Petitioner is in no position to complain that the court credited his testimony and granted the motion to dismiss the smuggling count and allowed only the transportation counts under 21 U.S.C. 176a and 26 U.S.C. 4744(a)(2) to go to the jury.[12]

[12] Of course, petitioner would be equally guilty of violating Section 176a by knowingly transporting unlawfully imported marihuana whether or not he himself had been the smuggler. As the court below pointed out (Pet. App. A 19), petitioner's own testimony at trial was more than sufficient to authorize conviction, regardless of where he obtained the marihuana. His only defense was that his religious predilections entitled him to obtain and use marihuana.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1968.

APPENDIX

A. Pertinent provisions of the Marihuana Tax Act:

26 U.S.C. 4741 provides:

(a) Rate.

There shall be imposed upon all transfers of marihuana which are required by section 4742 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Transfers to special taxpayers.

Upon each transfer to any person who has paid the special tax and registered under sections 4751 to 4753, inclusive, $1 per ounce of marihuana or fraction thereof.

(2) Transfers to others.

Upon each transfer to any person who has not paid the special tax and registered under sections 4751 to 4753, inclusive, $100 per ounce of marihuana or fraction thereof.

(b) By whom paid.

Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 4742 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

26 U.S.C. 4742 provides in pertinent part:

Order forms.

(a) General requirement.

It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753, inclusive, to transfer marihuana, except in pursuance of a written order of the person to whom such mari-

huana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate.

* * * * *

(c) Supply.

The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section and shall cause them to be distributed to each internal revenue district for sale. The price at which such forms shall be sold shall be fixed by the Secretary or his delegate, but shall not exceed 2 cents each. Whenever any of such forms are sold, the Secretary or his delegate shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana order to be plainly written or stamped thereon before delivering the same.

(d) Preservation.

Each such order form sold by the Secretary or his delegate shall be prepared to include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of 2 years so as to be readily accessible for inspection by an officer or employee mentioned in section 4773. The copy given to the purchaser shall be retained by the purchaser and preserved for a period of 2 years so as to be readily accessible to inspection by any officer or employee mentioned in section 4773. The second copy shall be preserved in the records of the internal revenue district.

* * * * *

26 U.S.C. 4743 provides:

The stamps provided in section 4771(a)(1) for marihuana shall be affixed by the Secretary or his delegate to the original order form.

26 U.S.C. 4744 provides in pertinent part:

(a) Persons in general.

It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 4741(a)—

(1) to acquire or otherwise obtain any marihuana without having paid such tax, or

(2) to transport or conceal, or in any manner facilitate the transportation or concealment of, any marihuana so acquired or obtained.

Proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by section 4742 to be retained by him shall be persumptive evidence of guilt under this subsection and of liability for the tax imposed by section 4741(a).

* * * * *

26 U.S.C. 4751 provides:

Imposition of tax.

Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall before engaging in any of the above-mentioned activities, and thereafter on or before July 1 of each year, pay the following special taxes respectively:

(1) Importers, manufacturers, and compounders.

Importers, manufacturers, and compounders of marihuana, $24 a year;

(2) Producers.

Producers of marihuana (except those included within paragraph (4)), $1 a year, or fraction thereof, during which they engage in such activity;

(3) Physicians, dentists, veterinary surgeons, and other practitioners.

Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, $1 a year, or fraction thereof, during which they engage in any of such activities.

(4) Persons engaged in research, instruction, or analysis.

Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, $1 a year, or fraction thereof, during which he engages in such activities;

(5) Persons not otherwise taxed.

Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, $3 a year; *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by paragraphs (1) and (2), may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section;

(6) Millers.

Any person who at a mill manufactures or produces from the plant Cannabis sativa L. any fiber or fiber products, $1 a year, or fraction thereof, during which he engages in such activities.

26 U.S.C. 4752 provides:

(a) Computation of tax.

Where a tax under paragraph (1) or (5) of section 4751 is payable on July 1 of any year it shall be computed for 1 year; where any such

tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

(b) Liability in case of activities in more than one place.

In the event that any person subject to a tax imposed by section 4751 engages in any of the activities enumerated in such section at more than one place, such person shall pay the tax with respect to each such place.

(c) Liability in case of more than one activity by same person at same time.

Except as otherwise provided, whenever more than one of the activities enumerated in section 4751 is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed.

26 U.S.C. 4753 provides in pertinent part:

(a) In general.

Any person subject to the tax imposed by section 4751 shall, upon payment of such tax, register his name or style and his place or places of business with the official in charge of the internal revenue district in which such place or places of business are located.

* * * * *

B. Pertinent provisions of the Treasury Department Regulations relating to marihuana—

26 C.F.R. 152.61 provides:

Scope of tax.

Except as otherwise provided, each transfer of marihuana to a person within the United States is subject to tax, to be paid in the manner hereinafter indicated. The tax is due whether the transferor be located within the United States or elsewhere. The tax applies to every transfer, no matter how often the same material may be transferred. It is no basis of exemption that a

transferred article was produced from material on the transfer of which tax was paid.

26 C.F.R. 152.62 provides:

Amount of tax.

Where the transfer is to a taxable person who has duly registered and paid special tax, the transfer tax is at the rate of $1 per ounce or fraction thereof. If the transfer is to a person who has not registered and paid the special tax under this act, tax at the rate of $100 per ounce or fraction thereof is due.

26 C.F.R. 152.63 provides:

Method of payment.

The tax is paid by attachment of adhesive stamps to order forms as hereinafter shown. Stamps of various denominations are available. Payment for the stamps shall be made when application for the order form is submitted.

26 C.F.R. 152.64 provides:

Affixing and canceling of stamps.

The proper stamp, evidencing the payment of the transfer tax, shall be affixed to the original order form by the district director or his representative, and the person so affixing the stamp shall cancel it by writing or stamping thereon, in ink, his initials, and the day, month, and year, or shall, by cutting with a machine or punch affix his initials and the date as aforesaid, in such manner as to render it unfit for reuse. The cancellation shall not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

26 C.F.R. 152.65 provides:

Reuse of stamps prohibited.

A stamp once affixed to one order form cannot lawfully be removed and affixed to another. As to refunds for amounts paid for stamps, see § 152.124.

26 C.F.R. 152.66 provides:

Written order required for transfer of marihuana.

Except as otherwise provided, every person seeking to obtain marihuana shall make application on Form 679a (Marihuana) to the district director of internal revenue for the district in which the transferee is located for the purchase of an order form. The application shall show (a) the transferee's name, address, and, if registered, the registration number, (b) the name and address of the transferor, and (c) a description, including quantities, of the desired articles or materials to be transferred. The application must be accompanied by a check, cash, or money order in payment of the transfer tax (see § 152.62), plus 2 cents in payment for the order form.

26 C.F.R. 152.67 provides:

Signing of application.

Generally, applications for order forms shall be signed by the same person or persons signing the application for registration (see § 152.25). However, when it is impracticable for the person signing the application for registration to sign the applications for order forms they may be signed by another person, provided a power of attorney authorizing such other person to sign the applications for order forms has previously been filed with and approved by the district director. The power of attorney shall be executed on Form 1315, or a substantially similar form, in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign applications for order forms, and shall affirm that the signature as shown is his signature.

26 C.F.R. 152.68 provide:

Signatures to be compared.

Upon receipt by the district director of an application for an order form the signature on such application shall be compared with that appearing on the application for registration or in the power of attorney (see § 152.67). Unless the district director is satisfied that the application is authentic it will not be honored.

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